

APPEAL NO. 93847
FILED NOVEMBER 5, 1993

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.011 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*). At a contested case hearing requested by the respondent (claimant) and held in Waco, Texas, on August 19, 1993, the hearing officer, (hearing officer), considered the sole disputed issue, namely, whether the appellant (law firm) was entitled to a legal fee in the sum of \$270.00 for services provided during the period from January 15 to February 26, 1993, which were approved on March 19, 1993, by a disability determination officer of the Texas Workers' Compensation Commission (Commission). In his Decision and Order, signed on August 30, 1993, the hearing officer made certain factual findings respecting the amounts of attorney and paralegal time involved, the reasonable hourly attorney and paralegal rates, and concluded that attorney's fees should be approved in the amount of \$270.00. The hearing officer also ordered that the Commission order of March 19, 1993, approving \$270.00 in attorney's fees be affirmed. The hearing officer's decision was forwarded to the parties by a transmittal letter of the Commission's Hearings Division dated September 8, 1993, and neither party has appealed from that decision.

By a transmittal letter dated September 9, 1993, the Commission's Hearings Division forwarded to the parties a Commission attorney's fee order signed by the hearing officer on September 1, 1993, which denied the payment of \$660.00 in attorney's fees requested by the law firm for time and expenses during the period from August 13 to August 19, 1993, to prepare for and attend the August 19th hearing. The order of the hearing officer denying these fees stated that the Commission lacked authority to approve attorney's fees since the claimant had dismissed his attorneys. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3((g)) (Rule 152.3(g)) provides that an attorney who contests the fee ordered by a hearing officer after a benefit contested case hearing shall request review by the Commission's Appeals Panel pursuant to the provisions of Rule 143.3. In appealing from the hearing officer's September 1st order, the law firm contends that the hearing officer failed to follow mandatory attorney's fee guidelines but does not comment on the assertion in the hearing officer's order that claimant had dismissed his attorney and that the Commission lacked the authority to approve the requested fees. No response was filed by the claimant.

DECISION

Finding the evidence sufficient to support the hearing officer's order, we affirm.

At the close of the August 19th hearing, the law firm submitted its application for \$660.00 in attorney's fees which represented 4.4 hours of attorney time at the rate of

\$150.00 per hour for preparation and attendance at the hearing. Claimant, who was assisted at the hearing by a Commission ombudsman, then introduced a copy of his letter of March 18, 1993, to the law firm which stated that he terminated his agreement with the law firm and no longer needed their services. Claimant also introduced his letter of March 19th forwarding to the Commission a copy of his March 18th letter. Since neither party has appealed from the hearing officer's decision respecting the order for payment of the \$270.00 in attorney's fees, we need not discuss the matter further. As for the law firm's appeal from the hearing officer's order denying its application for \$660.00 in attorney's fees, we are satisfied the evidence supports the hearing officer's decision. Claimant's March 18th letter terminating the law firm's representation was unrefuted. The law firm in its appeal asserts error only in the hearing officer's failure to follow the Commission's attorney's fee guidelines (see Rule 152.4) and does not contend it was representing claimant at the hearing nor does it even allude to the hearing officer's rationale for denying the fees.

Section 408.221(a) provides for approval by the Commission of an attorney's fee "for representing a claimant" before the Commission. Rule 152.1(b) provides in part that "[a]n attorney shall receive a fee for representation of any party before the commission only after the commission approves the amount of the fee. (Emphasis supplied.)" The law firm was representing itself in preparing for and attending the August 19th hearing, yet it seeks the award of attorney's fees from claimant's workers' compensation benefits. In its request for review, the law firm does not contend that its representation of the claimant had not ceased pursuant to claimant's March 18th letter discharging the law firm, nor that it was representing claimant in preparing for and attending the August 19th hearing. Nor does the law firm point us to any authorities in its appeal, aside from the Rule 152.4 guidelines, in support to its apparent position that it is entitled to attorney's fees from the claimant for its preparation and attendance at the hearing where it was defending its request for fees. In Texas Workers Compensation Commission Appeal No. 93389, decided July 1, 1993, we affirmed the hearing officer's denial of attorney's fees under substantially similar circumstances. See *generally* 7 TEX. JUR. 3D Attorneys at Law § 133. Rule 152.1(e) provides that "a client who discharges an attorney does not, by this action, defeat the attorney's right to claim a fee." Rule 152.1(e) would appear to cover situations where an attorney who has been discharged by the client seeks to recover fees for time and expenses incurred in representing the client prior to the attorney's discharge and, possibly, for post-discharge services rendered by the attorney required by the Texas Disciplinary Rules of Professional Conduct or similar rules governing professional conduct. Accordingly, we find the law firm's request for review to be without merit.

The September 1, 1993, order of the hearing officer denying the requested attorney's fees is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge